

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

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In Re:) Case No. 23-30564
) Chapter 11
THE ROMAN CATHOLIC ARCHBISHOP)
OF SAN FRANCISCO) San Francisco, California
) Thursday, October 26, 2023
Debtor.) 1:30 PM
)

FINAL HEARING ON DEBTOR'S
EMERGENCY MOTION FOR ORDER
(1) AUTHORIZING PAYMENT OF
PREPETITION WAGES, SALARIES,
AND EMPLOYEE EXPENSES; (2) TO
PAY ACCRUED EMPLOYEE BENEFITS
AND TAXES; AND (3) DIRECTING
BANKS TO HONOR PAYROLL AND
EXPENSE CHECKS FILED BY THE
ROMAN CATHOLIC ARCHBISHOP OF
SAN FRANCISCO [7]

FINAL HEARING ON DEBTOR'S
EMERGENCY MOTION FOR INTERIM
AND FINAL ORDERS (1)
AUTHORIZING CONTINUED USE OF
EXISTING CASH MANAGEMENT
SYSTEM, OPERATIONAL BANK
ACCOUNTS AND RELATED
INVESTMENT ACCOUNTS; (2)
AUTHORIZING MAINTENANCE OF
EXISTING BUSINESS FORMS, (3)
EXCUSING COMPLIANCE WITH
SECTION 345(B); (4)
AUTHORIZING CONTINUED USE OF
CURRENT INVESTMENT POLICY;
AND (5) SCHEDULING A FINAL
HEARING FILED BY THE ROMAN
CATHOLIC ARCHBISHOP OF SAN
FRANCISCO [9]

DEBTOR'S MOTION FOR EXTENSION
OF THE DEADLINE FOR REMOVAL
OF CIVIL ACTIONS FILED BY THE
ROMAN CATHOLIC ARCHBISHOP OF
SAN FRANCISCO [181]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES (All present by video or telephone):

For the Debtor:

PAUL J. PASCUZZI, ESQ.
Felderstein Fitzgerald Willoughby
Pascuzzi & Rios LLP
500 Capitol Mall
Suite 2250
Sacramento, CA 95814
(916)329-7400

ORI KATZ, ESQ.
Sheppard, Mullin, Richter &
Hampton LLP
4 Embarcadero Center
17th Floor
San Francisco, CA 94111
(415)774-3238

For Office of the U.S.
Trustee:

JASON BLUMBERG, ESQ.
U.S. Department of Justice
501 I Street
Suite 7-500
Sacramento, CA 95814
(916)930-2076

Proposed Counsel for the
Official Committee:

JOHN W. LUCAS, ESQ.
Pachulski Stang Ziehl & Jones
One Sansome Street
Suite 3430
San Francisco, CA 94104
(415)263-7000

Also Present:

Most Rev. Salvatore J. Cordileone
Archbishop

Joseph J. Passarello
Chief Financial Officer

Fr. Patrick Summerhays
Responsible Individual

Paul E. Gaspari, Esq.
Special Litigation Counsel

Wayne P. Weitz
B. Riley Advisory Services

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United States Bankruptcy Court
450 Golden Gate Avenue
San Francisco, CA 94102

Transcriber: RIVER WOLFE
eScribers, LLC
7227 N. 16th Street
Suite #207
Phoenix, AZ 85020
(800) 257-0885

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SAN FRANCISCO, CALIFORNIA, THURSDAY, OCTOBER 26, 2023, 1:30 PM

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(Call to order of the Court.)

THE CLERK: Calling the matter of the Roman Catholic Archbishop of San Francisco.

And counsel's in the courtroom, Your Honor.

THE COURT: Appearances, please. Good afternoon.

MR. PASCUZZI: Good afternoon, Your Honor. Paul Pascuzzi, Felderstein Fitzgerald Willoughby Pascuzzi & Rios, for the debtor, the Roman Catholic Archbishop of San Francisco, a corporation sole.

And if I might, Your Honor, for the record, we have a couple of client representatives also on the Zoom, not that they need to be on the screen, but Abp. Cordileone, Fr. Summerhays, Mr. Passarello, Mr. Gaspari, who is our special litigation counsel, and Wayne Weitz from B. Riley, who/s the financial adviser.

THE COURT: All right. Well, I'm sorry. I can't see you all or you can't see me, but I can blame Xfinity on that for my neighborhood internet. But good afternoon, everyone.

And also appearing for the committee, Mr. Lucas, are you there, or someone for the committee?

MR. LUCAS: Yes, Your Honor. John Lucas, Pachulski Stang Ziehl & Jones, counsel to the committee.

THE COURT: Mr. Pascuzzi, I'm not sure I know what's

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2 left active on the docket for this afternoon, so I'll sort of
3 let you tell me what's left.

4 MR. PASCUZZI: Yeah. And Your Honor, Mr. Katz from
5 Sheppard, Mullin is also on the screen, and I think Mr.
6 Blumberg from the U.S. Trustee, if they needed to make their
7 appearances.

8 THE COURT: Okay. I'm sorry. I guess I thought I
9 noted Mr. Katz.

10 Mr. Katz, are you there?

11 MR. KATZ: I am, Your Honor. Ori Katz, Sheppard,
12 Mullin, Richter & Hampton, for the debtor.

13 THE COURT: And Mr. Blumberg.

14 MR. BLUMBERG: Good afternoon, Your Honor. Jason
15 Blumberg for the United States Trustee.

16 THE COURT: Okay. Back to you, Mr. Pascuzzi.

17 MR. PASCUZZI: Okay. Thank you, Your Honor. We have
18 two continued first day motions on calendar. One is the wage
19 motion. The other is the cash management motion. And then a
20 motion that was subsequently filed is a motion to extend the
21 time to remove actions.

22 And I believe as to the wage motion, Mr. Lucas for the
23 committee filed a response. I don't think it's an opposition
24 or an objection. In fact, it said it's not an objection.

25 As to the cash management motion, the U.S. Trustee has
an objection as to the investment accounts that we have not

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2 been able to resolve.

3 And as to the removal extension deadline motion,
4 there's been no responses or opposition.

5 THE COURT: Okay. Well, everything you said is
6 consistent with what I had gleaned from the docket.

7 So taking it in reverse order, I've reviewed the
8 extension motion, and it seems in order to me. So without
9 opposition, I will grant it and as requested.

10 And as to the wage motion, I sort of also had the same
11 observation that the committee stated its position, but not as
12 a formal objection. And I'd like to just leave it unacted upon
13 because there's nothing for me to act upon. But I'm aware of
14 the committee's point of view. And I'm prepared to approve on
15 a final basis the wage motion, if that's acceptable to counsel.

16 MR. LUCAS: Your Honor, that's --

17 THE COURT: Mr. Lucas, do you have a statement on
18 that? Anything? I mean, is there any reason why I shouldn't
19 just put that last vestige of that first day motion to bed and
20 say, fine, it's final?

21 MR. LUCAS: Your Honor, this is John Lucas. No, there
22 is not. As we said in our response, there's information that
23 the committee would like, and we will go through the proper
24 mechanism, if you will, to get that information. Thank you.
25 Yeah.

26 THE COURT: Okay. Okay. I mean, I'd rather just

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1 leave it at that. I'm not going to express any personal views
2 on it because it's not an action item.

3 So Mr. Pascuzzi, given Mr. Lucas's statement, I guess
4 before I conclude that subject, I should say, is there anyone
5 on the call that wishes to be heard on the debtor's what we
6 call the wage motion and any of the aspects of it?

7 Okay. Hearing none, Mr. Pascuzzi, I'll put it to bed
8 by saying it's allowed or granted as explained on the record
9 and ask you to go ahead and upload the order; does that work
10 for you?

11 MR. PASCUZZI: Yes, Your Honor. I will do that.

12 THE COURT: Okay.

13 MR. PASCUZZI: And Mr. Katz is going to handle the
14 cash management motion, Your Honor.

15 THE COURT: Okay. All right. And on that subject,
16 Mr. Katz, before you elaborate, I thought I got the impression
17 that the U.S. Trustee had expressed a view, but I didn't
18 understand it was still up for a decision. So go ahead and
19 take it from there.

20 MR. KATZ: Thank you, Your Honor. Ori Katz for the
21 debtor. And I'll start with a little bit of background. Help
22 get everyone up to speed.

23 But there's only a narrow issue under this motion that
24 remains unresolved, Your Honor. It just has to do with the
25 application of Section 345(b) to the investment accounts. And

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1 what happened, Your Honor, is we had been meeting and
2 conferring with the U.S. Trustee. We did have a series of
3 agreed continuances, and part of that was to allow the parties
4 to discuss and exchange information. Part of it was to allow
5 the committee to be appointed and either take a position or
6 not.

7 Ultimately, Your Honor, as to the United States
8 Trustee, following a really good-faith effort and a series of
9 meeting and conferral over an extended period of time, we
10 weren't able to reach a resolution on that specific part of the
11 motion. We do have agreement on a proposed form of order that
12 covers everything else that's not at issue.

13 And as to the committee, I believe they may chime in,
14 but I don't want to speak for them other than to say that we
15 met and conferred with the committee, which was one of the
16 reasons for the continuance. We provided them quite a bit of
17 info. We made available to them our financial advisor and
18 connected B. Riley with their financial advisor.

19 But the bottom line is, Your Honor, I think we could
20 use some guidance from the Court to resolve this narrow, open
21 issue, and I'm happy to proceed any way the Court would like.
22 I could jump in with my views, answer questions, or really take
23 my cues from Your Honor.

24 THE COURT: Well, just narrow-in and pinpoint the
25 issue, and then I'll ask Mr. Blumberg to tell me the

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1 alternative. I mean, again, I think I probably knew it and
2 read it and know it, but I'd like to hear it as it presently
3 has been resolved and narrowed-down to.

4 MR. KATZ: Yeah. I think the issue, Your Honor, is
5 whether cause exists under 345(b) to provide for a waiver of
6 strict compliance with that provision of the Code, which would
7 otherwise require liquidation of about 160 million dollars of
8 various investments, some of which are completely illiquid and
9 are locked up, and placing the net proceeds of that liquidation
10 in a depository in strict compliance with the U.S. Trustee
11 guidelines. And so it comes down to whether we've shown cause
12 for a waiver. I think that's the issue. And the debtor
13 believes we have and --

14 THE COURT: Okay. Can you --

15 MR. KATZ: Yeah. Sorry, Your Honor.

16 THE COURT: Can you break it down into -- again,
17 pardon me for not being able -- I mean, I can look at the prior
18 motion, but where are those? Those are in two different
19 existing accounts that are not authorized depositories; isn't
20 that the case?

21 MR. KATZ: That's correct, Your Honor. Well, these
22 are custodial/brokerage accounts, and one of them is with U.S.
23 Bank. That's what we refer to in the papers as the pooled
24 account. And the other is with Bank of America Securities,
25 which is our -- which is invested with a BlackRock Federal Fund

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1 ETF, essentially. And so those aren't authorized depositories.

2 They're affiliated with authorized depositories. Both
3 U.S. Bank and Bank of America are authorized depositories. But
4 they're not held in strict compliance with the U.S. Trustee
5 guidelines, which would require some sort of collateral or
6 backstop against the amounts held.

7 THE COURT: Right. Right. So if either of those two
8 institutions failed, there's only a limitation on the insured
9 amount, which is minimal by comparison, right?

10 MR. KATZ: Relative the amounts held, yes, Your Honor,
11 but I'm not sure that even -- well, I'm not sure how likely a
12 failure is at that level of entities that are rated this
13 highly. But setting that aside, even if either failed, because
14 of the nature of the investments, I'm not certain that that's a
15 complete loss automatically, whether those would automatically
16 be swept into a bankruptcy, for example, and lost. I think
17 it's a complex analysis, so I'm not sure the risk is quite that
18 high.

19 THE COURT: No, I understand. Listen, it's not like
20 I -- no, I understand.

21 But let me ask Mr. Blumberg, as a practical solution,
22 what would you want me to order? I mean, Mr. Katz has now
23 stated the issue.

24 MR. LUCAS: Your Honor, this is John Lucas.

25 THE COURT: Yes.

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1 MR. LUCAS: And I apologize for butting in, but would
2 it be more appropriate if I said a few words on behalf of the
3 committee first before Mr. Blumberg went? Because I think that
4 we're more on the same page with debtor's counsel here as
5 opposed to the United States Trustee.

6 THE COURT: All right.

7 MR. LUCAS: I'm happy to proceed however you want,
8 though.

9 THE COURT: Okay.

10 MR. LUCAS: I just didn't want to mess up the flow. I
11 apologize.

12 THE COURT: Go ahead, Mr. Lucas. Go ahead and make
13 your statement.

14 MR. LUCAS: Thank you. Thank you, Your Honor. John
15 Lucas, Pachulski Stang, for the committee.

16 Your Honor, the committee didn't file anything formal
17 in response to the motion, the objection, or the reply that was
18 filed recently. But the committee sort of sighs here because
19 our view here is that the debtor isn't trying to cut corners or
20 to, I think, kind of compromise anything, but the debtor is
21 actually trying to preserve things. And if you look at the
22 reply, Your Honor, there are two buckets of investments.

23 There's the Bank of America stuff, which is invested
24 through BlackRock, but it's approximately fifty-four million
25 dollars in United States Treasuries. And we think that that is

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1 an important point. If they had to divest that and put it into
2 an approved depository, the estate is already losing about 34,
3 35,000 dollars a month in interest that it would otherwise
4 receive. So that's one point, Your Honor.

5 And then the other point, Your Honor, which the
6 committee has discussed with the debtor's counsel and the
7 financial advisers, is that there is a huge, huge chunk of
8 money, investments in the U.S. Bank account through those
9 various investment vehicles that are subject to restrictions,
10 and that it's as if the debtor is going to be asked to just
11 walk away from the money or experience severe penalties for a
12 requirement that's under the Bankruptcy Code, but it's not a
13 requirement that is always enforced. And we think that the
14 facts here support looking past that, Your Honor.

15 THE COURT: Well, I'm looking at the reply here, or
16 excuse me -- yeah, the reply, which is doc 87. Is there a
17 later -- is it this -- there's a later supplemental from Mr.
18 Passarello. Does that give me more specifics on that, help me
19 on that? I did look at these things quite some time ago, and
20 that gets back to my point about I'm not sure what's still
21 liable. So --

22 MR. LUCAS: Your Honor, there --

23 THE COURT: -- Mr. Lucas, what were you -- what were
24 you were you referring to when you referred to the fifty-four
25 million, for example, and the penalties?

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1 MR. LUCAS: So Your Honor, I am using Mr. Katz'
2 pleading that he filed the other day as my sort of step stool
3 to provide some of the factual information that the debtors put
4 in. And so perhaps I could turn it over to Mr. Katz, and I
5 could let him sort of set the table a little bit better. But
6 as Your Honor can probably tell, I've discussed this with Mr.
7 Katz and that we don't want the estate to be harmed here by a
8 formalistic requirement of Bankruptcy Code. But I'll let Mr.
9 Katz sort of set the table a little bit better. I'm sorry I
10 got out a little bit ahead.

11 MR. KATZ: Your Honor, this --

12 THE COURT: Well, but before we do that, I'm going to
13 take your comment, Mr. Lucas, and let Mr. Blumberg be heard.
14 This is not -- I can't turn this into a roundtable discussion.

15 Mr. Blumberg, would you help me understand what you
16 propose as a practical alternative to what the debtor and the
17 committee wants?

18 MR. BLUMBERG: Yes, Your Honor. Thank you. Jason
19 Blumberg for the United States Trustee. I'll get right down to
20 the kind of the brass tacks.

21 There are essentially two accounts here. There's the
22 Bank of America Securities account, and then there's the pooled
23 investment accounts at U.S. Bank. The Bank of America account
24 has about 57.6 million, and the U.S. Bank account has
25 approximately 100 million in various pooled investment funds.

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1 The Bank of America account is the one that gives
2 us -- well, let me take a step back. The Bank of America
3 account is a liquid account. There would be no tax
4 consequences to liquidating it. And we think that that account
5 should be liquidated and moved over to a debtor-in-possession
6 account that's collateralized as required by Section 345(b) of
7 the Bankruptcy Code. That would protect estate state funds as
8 Congress envisioned.

9 I understand the argument that Mr. Lucas alluded to,
10 that the fund that the debtor invests in has interests in cash
11 and treasury bills. But with respect, the debtor doesn't have
12 a direct interest in those funds. It has an interest in the
13 black market money market mutual fund, and it holds that
14 interest through Bank of America Securities. So there is a
15 level of institutional risk that exists here. There's perhaps
16 two levels of institutional risk.

17 Coming back to the supplemental reply, in connection
18 with the costs of liquidating these accounts, the debtor
19 indicated on -- well, anyway, the debtor indicated that a cost
20 of ten million dollars to liquidate these accounts would impede
21 the debtor's reorganization. So a ten-million-dollar cost
22 would impede the debtor's reorganization. A loss of 60 or 160
23 million would surely do so the same. So we do think the Bank
24 of America Securities account should be liquidated and moved
25 over to a debtor-in-possession account.

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1 Now, with respect to the U.S. Bank pooled investment
2 accounts, it's a trickier issue because as the supplemental
3 reply lays out, there are costs and liquidity issues associated
4 with those accounts. That said, as I understood the
5 supplemental reply, I think I believe six of the accounts were
6 liquid. Four private funds were of such that they could be
7 liquidated on a quarterly basis. And then four real estate
8 funds really could not be liquidated without incurring
9 substantial costs.

10 So going back through those, it's our position that
11 the six funds that are liquid, those should be liquidated and
12 move over into a debtor-in-possession account so that the funds
13 are protected and collateralized, as Congress envisioned.

14 With respect to the private funds that can be
15 liquidated on a quarterly basis, the United States Trustee's
16 position is that when that quarterly opportunity or window
17 arises, then the debtor should avail itself of that opportunity
18 and move the proceeds over into a debtor-in-possession account.

19 And then finally, with respect to the real estate
20 funds, we understand the debtor's point. There would be
21 significant costs. There are liquidity issues. We would
22 request that the debtor be required to liquidate those real
23 estate funds only in accordance with the contractual parameters
24 so that it doesn't incur the cost that it's worried about.

25 That's what we would propose. We think that is a

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1 reasonable solution that enables the debtor to avoid the costs
2 that it's worried about but at the same time respect Congress's
3 decision in Section 345(b) that estate funds should be
4 protected from the risk of loss by the financial institution.

5 THE COURT: But just to clarify, Congress didn't
6 mandate it, right, or mandated it in the sense that courts
7 have no discretion and debtors have some discretion and the
8 courts have some discretion. Right. It's not as -- and I
9 don't violate the law if I allow a waiver of the 345(b)
10 requirement, right?

11 MR. BLUMBERG: That's correct, Your Honor. You can
12 waive the requirement --

13 THE COURT: Okay.

14 MR. BLUMBERG: -- for cause. We think that's a -- we
15 think it's not a strong argument on the debtor's side with
16 respect to the Bank of America Securities account. We think
17 they have a stronger argument we can see with respect to the
18 pooled investment accounts. But we think what we're proposing
19 respects what the debtor is trying to do.

20 THE COURT: Well, what I'm trying to do is keep up
21 with everybody on the information. So I'm looking, and I want
22 to make sure I haven't missed something. So I have in-hand Mr.
23 Passarello's original declaration, which is document 14, filed
24 way back on August 21st. And then I have the debtor's reply,
25 which is document 87. And I have a second supplemental

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2 declaration of Mr. Passarello, document 87-1.

3 Now, I wonder if I'm at least misplacing a declaration
4 of Mr. Passarello that isn't numbered. Oh, no, here it is. I
5 just found it, the supplemental declaration, which is document
6 184.

7 All right. And so the three Passarello documents and
8 declarations, rather, are the three operative documents, right,
9 Mr. Blumberg, or --

10 MR. BLUMBERG: Your Honor, I believe --

11 THE COURT: -- (indiscernible) something.

12 MR. BLUMBERG: Your Honor, this is Jason Blumberg for
13 the United States Trustee. There was a supplemental reply
14 filed by the debtor on Friday at docket number 232. And I
15 believe there is a declaration of Mr. Passarello attached to
16 that filing and --

17 THE COURT: That was just filed just -- that was just
18 last Friday?

19 MR. BLUMBERG: Yes, Your Honor. And Mr. Passarello's
20 declaration, I believe, is 232-1.

21 THE COURT: Yes. Okay. I do see that. I think I
22 have a feeling that that's something that I didn't catch up
23 with. If it was filed on Friday, I was pretty much out of
24 pocket for a couple of days. And when I looked at the
25 document, or the docket, excuse me, I may have missed it or
26 something. I don't know.

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1 So I take it that the document that was filed on
2 Friday has some of the more specifics that you're focusing on;
3 is that a correct statement?

4 MR. BLUMBERG: That's correct, Your Honor.

5 THE COURT: Okay. So I owe it to both sides here to
6 be a little more informed. And I will confess that having
7 thought I've reviewed everything, I missed that document. But
8 what I -- so therefore, Mr. Blumberg, I'm going to ask that you
9 again tell me a little bit more.

10 If I were to order the debtor to do what you're
11 suggesting, particularly with the B of A amount, and you say,
12 well, you want it in a collateralized DIP account, what does
13 that translate to in terms of where that money ends up in terms
14 of the impact? In other words, let me say that more precisely.
15 If I magically could move all that money to where you think it
16 should be moved today, what would be the impact in terms of the
17 earning capacity that those funds would make, compared to what
18 they make now?

19 Leave aside risk. So that to state it more
20 specifically, that fifty-seven million is sitting where it's
21 sitting now, and it's producing a certain return on that
22 investment. And if we to go with your suggestion, it would be
23 somewhere else. And what would be the return or the comparison
24 of that return with what happens if I don't make it move?
25 Understand my question?

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1 MR. BLUMBERG: I do, Your Honor. So I'm going off the
2 supplemental reply at pages 8 through 10. That's docket number
3 232.

4 And according to that document, the debtor states that
5 it's earning 5.23 percent where the funds are invested now. It
6 states that it would earn 4.5 percent if it had to move the
7 funds to a debtor-in-possession account. And then the debtor
8 estimates that the cost or the spread would result in a cost of
9 36,000 dollars a month. That's not insignificant, but I would
10 argue that it's fairly modest when compared to an investment of
11 fifty-seven million dollars, especially when the debtor intends
12 to move out of this bankruptcy case quickly and expeditiously.

13 I would also note that one of the cases that we cited
14 in our original objection, or rather actual objection, is the
15 Ditech case, 605 B.R. 10, out of the Southern District of New
16 York. And that case, the bankruptcy court ordered the debtor
17 to comply with Section 345(b), even though the cost of doing so
18 would have been 80,000 dollars a month. So there is precedent,
19 not binding precedent for sure, but precedent for the Court
20 requiring compliance with Section 345(b), even if it would --
21 even if it would result in additional costs or reduced earning
22 capacity.

23 THE COURT: Okay. And again, I repeat one more time,
24 I need to study more carefully the document that I've admitted
25 that I haven't studied. So I'm trying to do a quick study on

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2 and listen to what you're saying.

3 So Mr. Blumberg, what you're telling me in sort of
4 simple, simple terms is if the debtor moves this fifty-seven
5 million dollars, it'll go negative by 36,000 dollars a month,
6 but it will have protected much more safely, you believe, the
7 fifty-seven million. So the cost of -- the cost of that move,
8 you have 36,000 a month. Obviously, it's not to be ignored.

9 But if we factor in the expectation that the debtor
10 might be able to exit the bankruptcy sooner rather than later.
11 And I am not going to get into a speculation about the details
12 there. That's what's happening, and I guess, and I'm asking
13 the question as I'm looking on the screen here and my poor
14 internet today, that's what Mr. Passarello said.

15 So that's what it comes down to, right, Mr. Blumberg?

16 MR. BLUMBERG: That's correct, Your Honor. In our
17 view --

18 THE COURT: Okay.

19 MR. BLUMBERG: -- the 36,000 is not insignificant, but
20 it's modest compared with the ability to protect the estate
21 from financial institution failure, the risk, albeit small.

22 THE COURT: Okay. Does the same document that I've
23 admitted that I haven't studied give us the same kind of
24 analysis, or can you give me the same kind of analysis for the
25 U.S. Bank amount, the hundred million? Or is
26 that (indiscernible). I think Mr. Katz said it's a little more

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1 complicated.

2 MR. BLUMBERG: Your Honor, this is Jason Blumberg for
3 the United States Trustee. I don't know if with respect to the
4 U.S. Bank account, the debtor broke out the opportunity costs
5 if it were to move to a debtor-in-possession account. What it
6 did do was kind of go through the liquidity issues that would
7 present itself if it were required to liquidate those accounts
8 and the costs associated with that, which I believe the number
9 the debtor indicated was ten million dollars.

10 But as I understood the supplemental reply, there were
11 actually six out of the fourteen diversified or pooled funds
12 that actually didn't have liquidity constraints. So I don't
13 know if the ten million would be attributable at all to the
14 liquidation of those six accounts.

15 And then there were four private funds, "private
16 funds", that could be liquidated, as I understood it, on a
17 quarterly basis without penalty.

18 And then there were four real estate funds that it
19 kind of sounds like it would be exceedingly difficult
20 contractually to liquidate. And I understood the ten million
21 dollars to be associated with that. Sorry, Your Honor.

22 THE COURT: Okay. But the point is, again, if I
23 pretend that I can solve this thing in a flip of a switch, it
24 means a very much more complicated transaction or series of
25 transactions.

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1 But from your comment, Mr. Blumberg, it sounds to me
2 like your concerns are more focused on the B of A amount and
3 the costs there. And again, I'm not asking to -- this isn't a
4 negotiation position. But you seem like that's a much higher
5 priority in terms of what you and the U.S. Trustee contemplate
6 as the risk to the estate and what you would like to be dealt
7 with more immediately; is that a fair statement?

8 MR. BLUMBERG: I think that's fair, Your Honor. And
9 also I think the debtor has had a more difficult time meeting
10 its burden to demonstrate cause with respect to that Bank of
11 America account.

12 THE COURT: Okay. Well, sometimes when I have to pick
13 off these terms like cause, we all know from all of our
14 experience. Maybe the people who are in this bankruptcy for
15 the first time in their entire lives don't know what I'm
16 referring to, but all of you bankruptcy pros know what I'm
17 talking about, is that cause is one of those terms that --
18 cause is in the mind of the beholder sometimes, and the
19 beholder might be the judge that's making the decision.

20 Look, what I'm going to do is not something I like to
21 do, but I'm going to, having confessed to you that I simply
22 was -- didn't catch up with the latest filing, I'm going to
23 take time -- my time, not on this hearing. I'm going to review
24 carefully everything that Mr. Passarello said in that
25 supplemental document and the debtor. And I will focus on the

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1 B of A issue much more specifically and take the matter under
2 advisement and try to make a decision very quickly.

3 And I'm not going to turn this into a learned
4 dissertation. I'll probably issue a three-sentence order. But
5 I'm going to make a decision, and it comes down to motion, the
6 U.S. Trustee objection or U.S. Trustee objection sustained in
7 whole or in part. And I know what the choices are. So I'll
8 let any of the counsel who wish to to make any further comment,
9 but that's my present intention.

10 So I don't feel it would be carrying out my
11 responsibility or doing justice to either side if I just
12 stopped right now and said, here's my ruling because I don't
13 ignore the submissions by the parties.

14 So anyone else wish to be -- make a quick closing
15 comment on this subject?

16 MR. KATZ: Your Honor, this is Ori Katz from Sheppard,
17 Mullin for the debtor. You had ask me to tee up the issue,
18 which I did, but I would like an opportunity to just very
19 briefly respond to Mr. Blumberg's comments and raise a few
20 points.

21 THE COURT: Okay. Mr. Katz, you don't have to -- you
22 don't have to name your firm or your client and your full title
23 every time you speak up. I know you, and I recognize your
24 voice. But go ahead and --

25 MR. KATZ: All right.

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1 THE COURT: -- please, please make your comments.

2 MR. KATZ: Thank you, Your Honor. So I want to start
3 by building on something you mentioned, Your Honor, which is
4 that it can't be that it's strict mandatory compliance every
5 time with 345(b) because otherwise why amend it to include for
6 cause. And so it's really a question of what is for cause
7 mean, and is it met here.

8 And there's actually not a lot of controversy over the
9 body of case law. Two or three primary cases are cited in both
10 the briefs. And I want to address Ditech in a moment. But the
11 factors are not controversial, and most of the factors that the
12 cases cite are favorable for the debtor here.

13 There's no dispute this is a big, complicated case.
14 Nobody disputes a lot of dollars are at issue and that the
15 debtor has a large annual operating budget. It's not disputed
16 that the financial institutions that are involved are highly
17 rated by Standard & Poor's.

18 And I don't think anyone disputes that there are
19 safeguards in place. There's a professional money manager
20 that's mentioned in the supplemental pastoral declaration.
21 There's an investment committee in place.

22 A few other factors that I think are relevant. The
23 funds that issue that we're talking about are not critical for
24 operations, and I'm going to come back to that when I discuss
25 Ditech.

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1 And then in terms of harm, there could be real harm
2 obviously to the debtor from early liquidation of locked funds.
3 And even if you take what is now a balanced pool and you start
4 to liquidate those things that are liquid, leaving behind only
5 those things that are restricted, you've taken a balanced pool
6 that was part of pretty prudent and careful investment planning
7 and you've unbalanced it.

8 A few other factors, Your Honor. We know
9 reorganization is highly likely. And I'm not going to speak to
10 time table, but we have a track record of religious
11 organization cases that come before this one, and
12 reorganization is the likely outcome. I think one of the most
13 significant factors that isn't mentioned in Service Merchandise
14 but is mentioned in Judge Holt's decision in King Mountain is
15 that no economic stakeholder has opposed the motion, and Judge
16 Holt focused on that quite a bit. He said silence by
17 sophisticated financial stakeholders should be viewed as either
18 support or acquiescence.

19 And in this case, we have a lot of sophisticated
20 parties. They aren't appearing on this hearing, Your Honor,
21 but the notices of appearance over the last forty-five days
22 tell us we have sophisticated bankruptcy counsel with
23 sophisticated clients that have eyes and ears on the case, but
24 no one filed anything. And other than the committee who did
25 reach out, no other economic stakeholder even picked up the

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1 phone to call me.

2 And so that the committee is not actively opposing and
3 has offered support is meaningful. And then when you couple
4 that with the nature of the investments, the track record of
5 performance, the fact that a loss isn't going to impact
6 operations, the professional management that's supervised by an
7 investment committee, you start to get a picture of a debtor
8 that's prudently exercising their business judgment, and that's
9 what Judge Holt was talking about in his decision is in larger
10 cases, not wanting to second guess or interfere with that.

11 And the point of amending 345(b) was to make it clear
12 it's not mandatory. You can't protect against any and every
13 risk. And the legislative history speaks specifically to large
14 cases as being likely for exceptions or more likely for
15 exceptions.

16 So then I want to turn to Ditech. That's the case out
17 of the Southern District of New York. But that's a really very
18 different case. Yes, it was large and complex, but after that
19 it gets very different. And really, there's two important
20 things I want to point out to Your Honor in looking at Ditech.

21 Number one, it was clear that the loss of the invested
22 funds there in the Ditech case would have absolutely killed the
23 debtor's operations. They had ninety-five million dollars in a
24 Citibank account that gave them daily liquidity, and it was
25 vital to their operations.

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1 That's not the case here, Your Honor. Well, we're not
2 a typical business operating in a typical way. But the funds
3 that we're talking about, the investment funds, are not the
4 lifeblood of what this debtor does. We're not generally
5 relying on the liquidity of these funds in our daily
6 operations. The threat to the debtor here is nowhere near what
7 it was to Ditech.

8 Number two, in Ditech, Citibank, which is the --

9 THE COURT: I'm going to stop you there. Let me stop
10 you --

11 MR. KATZ: Yeah.

12 THE COURT: -- there for a minute, Mr. Katz. Would a
13 financial failure of some sort that caused a significant
14 diminution of these funds impact the debtor's ability to
15 compensate the creditors who have driven this debtor into
16 bankruptcy?

17 MR. KATZ: It could, Your Honor.

18 THE COURT: Yeah. None of whom as I -- none of whom
19 who I believe chose to be creditors the way lenders do, and
20 none of whom are financial institutions, but all of whom are
21 victims of what you know and I know drove this debtor into
22 bankruptcy, along with all the other religious ones that have
23 done it in the last few years.

24 So can you persuade me that a substantial loss of
25 money wouldn't (audio interference) ability of the debtor to

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1 compensate those claimants?

2 MR. KATZ: Your Honor, in the event of a substantial
3 loss of money, I mean, that's why I come back to the absence of
4 opposition from financial stakeholders. You have a committee
5 that is the --

6 THE COURT: Well, I mean, I know. I know. Come on,
7 Mr. Katz. And if we had a bunch of credit card companies or a
8 bunch of trade creditors who had invested and extended credit
9 at risk, maybe some of them would be speaking out. And I'm not
10 denying the position asserted by the creditors committee, and I
11 appreciate it.

12 But I think to start comparing this case with
13 something that has a lot of across-the-board activity of
14 financial institutions, this is really a nonstarter from my
15 point of view.

16 MR. KATZ: Your Honor, the other --

17 THE COURT: I mean, this is split. To some extent--
18 look, to some extent, this case resembles the PG&E fire cases
19 because as you well know and I know PG&E wouldn't have filed
20 bankruptcy the second time but for the fires. And so there
21 were hundreds of millions of dollars of financial creditors who
22 took an active role in the case but never, never really cared
23 about some of these other issues that drove what ultimately was
24 necessary to deal with the tort claimants.

25 So you don't have to (indiscernible) my views. I just

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1 telling you that that talking about what happens in a mass tort
2 case like fires or drug cases or a mass tragedy case involving
3 not thousands, but at least hundreds and hundreds of victims
4 who didn't choose to take the risk here is not persuasive.

5 So I have to think of it in terms of what do I tell
6 them if I make a decision that, for whatever reason, ends up
7 with a substantial hit that the debtor takes because one of its
8 financial decisions turned sour and it impacts the ability of
9 the debtor to compensate the claimants. Okay. So go ahead.
10 With that, I'll shut up and listen to you.

11 MR. KATZ: Thank you, Your Honor. The other thing I
12 wanted to just point out about Ditech was in that case,
13 Citibank offered to collateralize the account in question, the
14 ninety-five-million-dollar account, in order to bring it into
15 full compliance with U.S. Trustee guidelines. The cost to do
16 that would have been 80,000 dollars a month, which Mr. Blumberg
17 pointed out.

18 But what is also mentioned in the decision, which I
19 think was impactful for the Court, was that the debtors were
20 earning 2.6 percent per month interest on their Citibank funds,
21 which were fully liquid. That's about 2.5 million dollars. If
22 the debtors had just paid the 80,000-dollar monthly fee, they
23 would have been fully compliant. They wouldn't have had to
24 change their system at all in order to comply, meaning they
25 would have kept their existing cash management system. They

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2 would have just had a slight expense that wasn't even a
3 fraction of the interest they were earning on a monthly basis.

4 And because that case was a prearranged case, so
5 meaning on day one, the plan was in place and the timeline was
6 going to be very short, the total cost of the estate to bring
7 their existing system into full compliance was going to be
8 about 200 grand against millions of interest. And I think the
9 judge there was probably offended that more than 80,000 dollars
10 had been spent trying to waive compliance when it was right
11 there, readily available.

12 In contrast, we don't have that here. We don't have
13 the ability to bring existing accounts into compliance for a
14 nominal fee without disturbing the system we've carefully set
15 up. And so I just think Ditech is a very different situation
16 and not necessarily good guidance. That's really it, Your
17 Honor.

18 THE COURT: Okay.

19 MR. PASCUZZI: I think it's a trade-off of a very
20 minor risk that other courts have accepted as reasonable, given
21 the strength of the financial institutions involved, for near
22 certain interest gain as opposed to taking apart something that
23 was put together over an extended period of time, has a track
24 record of providing benefits that are not going to be
25 insignificant to the estate and that one way or the other
aren't going to impact operations, and then running the risk of

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significant penalties as well.

THE COURT: Okay. I appreciate your comments, Mr.
Katz.

All right. Unless any of you want to add any further,
I'm going to take the matter under advisement as I explained
and for the reason that I explained.

Anything further?

MR. BLUMBERG: Your Honor, this is Jason --

THE COURT: Okay. Yes. Mr. Blumberg.

MR. BLUMBERG: I'm sorry to prolong the hearing, but
I --

THE COURT: No. Go ahead. I asked you for a comment.
I asked you. Go ahead.

MR. BLUMBERG: Just two quick points. First, on the
risk of loss to the estate, I think you directed that question
to Mr. Katz, I would like to draw the Court's attention to page
12 of the debtor's supplemental reply, where the debtor talks
about the ten-million-dollar cost it estimates associated with
liquidating the U.S. Bank accounts.

The debtor states, this is a quote, "A loss of this
magnitude will impede significantly and certainly delay the
debtor's efforts to reorganize." That's 10 million, not 160
million. So I think the debtors have acknowledged that even a
loss of ten million will imperil the debtor's reorganization.
And that makes this case more like the situation in Ditech

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1 where the Court found that the loss of the funds would imperil
2 the organization. And it makes the case different from the
3 King Mountain Tobacco case that the debtors cited because the
4 Court very explicitly found that a failure of the financial
5 institutions would likely not be fatal.

6 The last point is, and I think Mr. Katz was kind of
7 alluding to this, is that these are not accounts that the
8 debtors use in its everyday operations. So moving the accounts
9 to safer harbors, particularly with respect to the Bank of
10 America account, is not going to interrupt the operations.
11 What we're talking about with respect to the Bank of America
12 account is the loss potentially of 36,000 dollars of interest a
13 month, and that has to be balanced against the protection
14 offered to the estate if the institution fails. Thank you,
15 Your Honor.

16 THE COURT: Okay.

17 MR. LUCAS: Your Honor --

18 THE COURT: And I will thank all of you then.

19 Well, I mean, I really don't want to go back over this
20 again. So the last person who wanted to speak, did you have
21 something brand new to add or just to repeat what you were
22 saying?

23 MR. LUCAS: Your Honor, this is John Lucas. I was the
24 one that was speaking up and wanting to say something in
25 response to what Mr. Blumberg just said. I understand --

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1 THE COURT: Okay.

2 MR. LUCAS: -- Mr. Blumberg's point about even the
3 loss of ten million dollars is something that could impede the
4 debtor's reorganization. But the debtor shouldn't be forced to
5 do something over a requirement in the Bankruptcy Code that is
6 remedied by cause could necessarily cause the debtor to lose
7 ten million dollars if it's required to liquidate these funds
8 because I think that's what the debtor's saying here is that
9 with respect to the U.S. Bank investments, there will be a loss
10 of ten million dollars, which can be avoided here, and
11 everything else is speculation.

12 And so to the extent that the debtor is required to do
13 this, it should be done in some way that ameliorates that. And
14 shouldn't be something that has to be done overnight so that
15 the debtor can address these potential losses in some way that
16 isn't going to cause these losses because I think what the
17 debtor's view here is that there will be a loss of ten million.
18 And as the United States Trustee is trying to, I think, sort of
19 seize on here is that even that would be harmful. So I don't
20 know why the UST would want something that would cause
21 immediate harm.

22 MR. BLUMBERG: Your Honor --

23 THE COURT: Okay.

24 MR. BLUMBERG: Jason Blumberg. Can I just respond
25 briefly? As I understood it --

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1 THE COURT: Well, no.

2 MR. BLUMBERG: I'm sorry, Your Honor.

3 THE COURT: Look, I think I got it. This isn't the
4 first time I've dealt with this kind of issue. I just have to
5 get up with the facts.

6 So no, Mr. Blumberg. I don't want to be rude. I
7 just, I can't keep up with this back-and-forth if I don't go
8 back and read the documents carefully. And it might take
9 another little longer than I might have, but I'm going to do
10 it -- I'm going to do it my way.

11 So what I promise you is in relatively quick time,
12 within days, I promise, I will issue a decision. And I won't
13 be able to take the time, and I don't intend to take the time,
14 to get into some lengthy explanation. So I will take Mr.
15 Katz's advice and Mr. Blumberg's and I'll take a look at the
16 Ditech case and the other cases that he was referring to. And
17 I'll reread and -- not reread, read for the first time the
18 declaration that I admitted that I hadn't caught up with. And
19 I'll issue a decision on it.

20 And so I thank you for your time and more importantly,
21 your careful presentation, and the matter stands submitted.

22 So Mr. Pascuzzi, back to you for the debtor generally.
23 There's no other business to conduct today; am I correct?

24 MR. PASCUZZI: I don't think so, Your Honor. We've
25 got November 9th, I think, is our next hearing date with the

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claims procedures motion. So we'll see you then again.

2 THE COURT: Okay. Okay. Thank you all for your time.
3 I will conclude the hearing.

4 (Whereupon these proceedings were concluded at 2:15 PM)
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I, River Wolfe, certify that the foregoing transcript is a true and accurate record of the proceedings.



/s/ RIVER WOLFE, CDLT-265

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